

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MEFAIL CELIKOSKI

v.

C.A. No. 98-390-T

UNITED STATES OF AMERICA

**MEMORANDUM AND ORDER**

ERNEST C. TORRES, United States District Judge.

Mefail Celikoski has moved to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. For reasons stated below, the petition is denied as untimely.

**Background Facts**

Celikoski pled guilty to violations of 8 U.S.C. § 1326 (unlawfully reentering the United States following deportation) and 21 U.S.C. § 841(a)(1) (possession of cocaine with intent to distribute). On May 3, 1995, the court imposed concurrent sentences of 151 months on each count.

Celikoski's court-appointed counsel filed a timely notice of appeal and submitted an Anders brief together with a motion to withdraw as counsel. That motion was granted and Celikoski was given the opportunity to file a pro se brief. He failed to do so and, on September 10, 1996, the Court of Appeals concluded that the appeal was frivolous and affirmed Celikoski's conviction. United States v. Celikoski, No. 95-1503 (1<sup>st</sup> Cir. 1996). The Court of

Appeals' mandate was issued on October 2, 1996.

Celikoski never filed a petition for certiorari with the United States Supreme Court. However, on May 2, 1997, he sought leave from the Court of Appeals to file a "supplemental brief" in support of his appeal. The Court of Appeals treated the petition as one to reopen the appeal and denied it.

The instant petition was filed on July 31, 1998. It alleges erroneous advice on the part of counsel regarding the likely sentence as well as errors in calculating the applicable offense level under the United States Sentencing Guidelines.

### **Discussion**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2255, establishes a one-year period of limitations for filing § 2255 petitions. In this case, the period began to run on "the date on which the judgment of conviction [became] final." 28 U.S.C. § 2255(1).

When a defendant's petition for certiorari is denied, his conviction is deemed "final" on the date of denial. See Rogers v. United States, \_\_\_ F.3d \_\_\_, 1999WL 398092 (1<sup>st</sup> Cir. 1999).

However, there is some disagreement as to the date on which a conviction becomes "final" for § 2255 purposes where, as here, the defendant has failed to seek certiorari. Some courts have held that the conviction becomes "final" when the time for seeking certiorari expires. Kapral v. United States, 166 F.3d 565, 570

(3<sup>rd</sup> Cir. 1999). Other courts have held that the conviction becomes final when the Court of Appeals issues its mandate denying the appeal. Gendron v. United States, 154 F.3d 672, 674 (7<sup>th</sup> Cir. 1998), cert. Denied, \_\_\_ U.S. \_\_\_, 119 S.Ct. 1758 (1999).

In this case, there is no need to resolve the disagreement. Celikoski's petition is untimely in either event. The Court of Appeals' mandate issued on October 2, 1996, and the 90-day period for seeking certiorari expired on December 10, 1996. See Sup. Ct. R.13. Celikoski's petition was filed on July 31, 1998, more than one year after either date.

The fact that Celikoski's § 2255 petition was filed within one year after denial of his motion to file a "supplemental brief" is of no consequence because it did not alter the fact that his conviction previously had become final. If a defendant could extend the time for filing a § 2255 petition by simply filing a motion after his appeal has been decided, the period of limitation prescribed in AEDPA would be meaningless.

#### **Conclusion**

For all of the foregoing reasons, Celikoski's § 2255 petition is denied.

IT IS SO ORDERED,

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Ernest C. Torres  
United States District Judge  
Date:

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